

LAWSUIT THREAT RESULTS IN CLEANUP OF RIVER, BUT NO FINES FOR LONGTIME VIOLATOR

Last-Minute Deal with DEP Saves RRI Energy from Citizen Enforcement Suit, Lets Company off Without Paying Penalty for Thousands of Violations

PITTSBURGH, PA. – Just days before four environmental groups were to file a federal lawsuit to enforce thousands of violations of the Clean Water Act and other anti-pollution laws at the waste coal-burning Seward Generating Station in Indiana County, the Pennsylvania Department of Environment Protection issued a new permit to the plant’s owner, RRI Energy, Inc., that requires the facility to stop most illegal discharges uncovered by the citizen groups.

However, while celebrating this development as a victory for the environment, the environmental groups charge that the DEP has made a mockery of the enforcement process by shielding RRI from any penalties for its years of violations.

On May 24, 2010, Citizens for Pennsylvania’s Future (PennFuture), Defenders of Wildlife, PennEnvironment, and Sierra Club sent a 60-day notice letter to RRI and government regulators alleging approximately 12,000 violations of the federal Clean Water Act, the Pennsylvania Clean Streams Law, and the federal Resource Conservation and Recovery Act resulting from coal ash and coal refuse disposal and power generation activities at the Seward plant, which sits on the banks of the Conemaugh River.

After receiving the notice letter, officials from the DEP and RRI Energy apparently negotiated a new wastewater discharge permit for the company that contains new provisions intended to resolve the violations noticed by the citizen groups. Although DEP was unable or unwilling to enforce compliance at the Seward plant for years, and a new permit had been pending since 2006, the threat of a federal lawsuit by the citizens groups suddenly compelled compliance in a mere 57 days.

“Our notice letter achieved many of our goals,” explained Lisa Widawsky, an attorney with the Environmental Integrity Project who represents the groups. “RRI must immediately cease all discharges to the river from the outfall at which multiple permit violations occurred every month for the last five years. In addition, the company has four years to identify and eliminate -- either by collecting and removing, or treating and seeking permits for -- all of the illegal seeps from its coal refuse and coal ash pile into the Conemaugh River.”

“Yesterday’s action by DEP, negotiated behind closed doors, lets one of the nation’s largest power generators off the hook for years of violations of federal and state pollution laws,” said David Masur, Director of PennEnvironment.

The groups will likely be unable to seek a civil penalty against RRI themselves for violations that will cease as a result of this permit because federal law prohibits citizens from suing to enforce violations that are wholly in the past. The U.S. EPA and DEP, however, do have the authority to penalize RRI for its past violations.

“After years of not enforcing the law, DEP has raised the bar on the environmental standards that RRI must meet,” said Adam Kron, Defenders of Wildlife. “We will be watching closely to ensure that DEP enforces this new permit and take action if RRI continues to flout the law.”

The groups' notice letter alleged that mixed coal ash and coal refuse piles at the Seward plant have been illegally plaguing the Conemaugh River with toxic acid mine drainage for years, and that heated water from Seward's cooling tower caused greater than allowed temperature changes in the river.

"After years of continuous violations, RRI managed to install a collection and diversion system capable of ending the violations at outfall 012 exactly three days before the citizens could file an enforcement suit," said Randy Francisco, Field Organizer for Sierra Club's Beyond Coal Campaign. "The company was clearly stalling, and it now looks like they'll get away with it."

DEP classifies the Conemaugh River as a warm water fishery and has placed the river on the Commonwealth's list of "impaired" water bodies due to pervasive contamination from metals, pH, turbidity, and total suspended solids. The Conemaugh River has a long history of degradation, much of it caused by acid mine drainage from long-abandoned coal mines.

RRI is also being sued by PennEnvironment and the Sierra Club for persistent violations of the federal Clean Water Act and the Pennsylvania Clean Streams Law at its Conemaugh Generating Station just downstream of the Seward facility. That suit was filed in 2007.

RRI Energy, Inc., based in Houston, Texas, is one of the nation's largest providers of electricity and energy services. RRI owns 37 power plants in the U.S., including 17 in Pennsylvania and had nationwide revenues of approximately \$10 billion in 2005.

A copy of the notice of intent letter, as well as related attachments, is available at <http://www.environmentalintegrity.org>.

ABOUT THE GROUPS

Citizens for Pennsylvania's Future (PennFuture) is a statewide public interest membership organization that advances policies to protect and improve the state's environment and economy. With offices in Harrisburg, Philadelphia, Pittsburgh, West Chester, and Wilkes-Barre, PennFuture's activities include litigating cases before regulatory bodies and in local, state and federal courts, advocating and advancing legislative action on a state and federal level, public education and assisting citizens in public advocacy. For more information, visit <http://www.pennfuture.org>.

Defenders of Wildlife is dedicated to the protection of all native animals and plants in their natural communities. With more than one million members and activists, Defenders of Wildlife is a leading advocate for innovative solutions to safeguard our wildlife heritage for generations to come. For more information, visit <http://www.defenders.org>.

PennEnvironment is a statewide, citizen-based environmental advocacy organization. Its professional staff combines independent research, practical ideas and tough-minded advocacy to overcome the opposition of powerful special interests and win real results for Pennsylvania's environment. PennEnvironment draws on 30 years of success in tackling our state's top environmental problems. Visit <http://www.pennenvironment.org> for more information.

The Sierra Club members and supporters number more than 1.3 million. Inspired by nature, the Sierra Club and its members work together to protect communities and the planet. The Club is America's oldest, largest and most influential grassroots environmental organization. For more information, go to <http://www.sierraclub.org> on the Web.

The Environmental Integrity Project (<http://www.environmentalintegrity.org>) is a nonpartisan, nonprofit organization established in March of 2002 by former EPA enforcement attorneys to advocate for effective enforcement of environmental laws. EIP has three goals: 1) to provide objective analyses of how the failure to enforce or implement environmental laws increases pollution and affects public health; 2) to hold federal and state agencies, as well as individual corporations, accountable for failing to enforce or comply with environmental laws; and 3) to help local communities obtain the protection of environmental laws.

The National Environmental Law Center represents citizen groups across the country in actions to enforce the nation's environmental laws.